



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Russo & Sons, Inc.

File: B-280948

Date: December 11, 1998

J. Robert Russo for the protester.

Lawrence R. Lawson for National Computer Systems, an intervenor.

Phillipa L. Anderson, Esq., Department of Veterans Affairs, for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Government mishandling exception to considering a late proposal applies to acquisitions of commercial items despite absence of reference to the exception in standard Federal Acquisition Regulation (FAR) clause used in commercial item acquisitions, since applying the exception is not inconsistent with the intent of the FAR provision, and not applying the exception would not benefit the government or the competitive procurement system.

2. Proposal delivered by U.S. Postal Service Express Mail to agency mail room approximately 1 hour and 20 minutes before time established for receipt of proposals but not routed to the contracting office specified in solicitation until after the time set for receipt of proposals was properly rejected as late where:
(1) offeror failed to identify the package as containing a proposal and otherwise failed to mark it with an identifying solicitation number or closing date deadline and time; and (2) offeror allowed only 1 day for delivery.

DECISION

Russo & Sons, Inc. protests the rejection of its proposal as late under request for proposals (RFP) No. 640-112-98, issued by the Department of Veterans Affairs (VA) for data collection services. Russo contends that its proposal should not have been rejected since government mishandling prevented it from being timely delivered to the contracting officer.

We deny the protest.

Initial proposals were required to be submitted by 1 p.m. on Friday, August 14, 1998, to the following address:

VA Palo Alto Health Care System
ATTN: Lupe Arroyo (90C)
3801 Miranda Avenue
Palo Alto, CA 94304

RFP block 9, at 1. According to the agency, Ms. Lupe Arroyo is the contracting officer conducting the procurement and the symbol "90C" next to her name indicated to the mail room staff that she was located in the Acquisitions and Material Management Service (A&MMS) office. The procurement was conducted under Federal Acquisition Regulation (FAR) Part 12, which prescribes policies and procedures unique to the acquisition of commercial items. Section E of the RFP contained the clause found at FAR § 52.212-1, which instructs offerors to "[s]ubmit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation." FAR § 52.212-1(b).

On Thursday, August 13, at 11:50 a.m., Russo mailed its proposal from a United States Postal Service (USPS) Illinois post office via the Express Mail Next Day service delivery method. On Friday, August 14, at 11:40 a.m.--less than 2 hours prior to closing--the USPS delivered Russo's proposal to the VA's Palo Alto facility central mail room.

The agency explains that the mail room routinely makes two mail deliveries per day: a morning mail distribution from 8:30 a.m. to 9 a.m., and an afternoon mail distribution from 1 p.m. to 3:30 p.m. The mail room also provides priority handling of packages which are identified as bids or proposals with a due date, time, and solicitation number. These packages receive special attention and are immediately delivered to the addressee. Contracting officer's Sept. 14, 1998, finding of fact at 1.

Because the central mail room received Russo's package after it had conducted its routine morning mail delivery run, and it was not marked as a proposal with a due date or time, Russo's package was not delivered to the A&MMS office until some time after 2 p.m. on August 14--as part of the standard afternoon mail delivery run. Consequently, since Russo's proposal was not received at the A&MMS office until after the scheduled 1 p.m. closing time, the contracting officer rejected the proposal as late.

Russo contends that the cause of the VA's late receipt of its proposal was mishandling by the government. The protester argues that its proposal arrived at the address designated in the solicitation and was in the government's control prior to the time set for receipt of offers.

Russo's argument is based on the "government mishandling" exception found in FAR § 52.215-1(c)(3)(i)(B), which permits agencies to consider a late proposal if "[i]t was sent by mail . . . if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation." See also FAR § 15.208(b)(2). This provision, however, was not included in the solicitation. Instead, section E of the RFP contained the clause found at FAR § 52.212-1, which is applicable when acquiring commercial items and governs this procurement. See FAR § 12.301(b)(1). With respect to late offers, FAR § 52.212-1(f) simply states that "[o]ffers or modifications of offers received at the address specified for the receipt of offers after the exact time specified for receipt of offers will not be considered,"¹ and does not explicitly contain any of the exceptions to the rules governing late offers included in FAR § 52.215-1.

Despite the language of FAR § 52.212-1(f), we do not think that agencies should reject a late proposal for commercial items where the evidence shows that mishandling by the government is the paramount cause for the lateness. In our view, to reject a proposal where the reason for the rejection is that it was late due solely to government impropriety is not in the government's best interest--since it may be deprived of the most advantageous offer due solely to its own mishandling--nor does it benefit the competitive procurement system, given the perception of unfairness created by rejecting a proposal which is late through no fault of the offeror. In this regard, we see no reason to distinguish commercial item procurements from other types of procurements. Accordingly, we conclude that the government mishandling exception to considering late proposals applies to acquisitions of commercial items.

¹The agency states that the contracting officer mistakenly added to the standard language of this provision the phrase "in accordance with FAR § 52.214-7 Late Submissions, Modifications, and Withdrawals of Bids." Agency Report at 2 n.1. As the agency recognizes, FAR § 52.214-7 applies to sealed bids, not negotiated procurements. In any event, the erroneous amendment of the standard language does not affect our analysis here. The only exception (other than government mishandling) that could apply here is at FAR § 52.214-7(a)(3), which allows an agency to consider a bid received at the office designated in the solicitation after the exact time specified for receipt if it is received before award, and it "[w]as sent by [USPS] Express Mail Next Day Service-Post Office To Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of bids. . . ." See also FAR § 52.215-1(c)(3)(i)(C), which contains an identical provision applicable to late proposals. Since, as explained below, Russo's proposal was not mailed "two working days" prior to the date specified in the solicitation for receipt of proposals, this exception to the late proposal rule would be inapplicable here in any event.

It is the responsibility of the offeror to deliver its proposal to the proper place at the proper time, and late delivery generally requires that a proposal be rejected. Alpha Technical Servs., Inc., B-243322, B-243715, July 15, 1991, 91-2 CPD ¶ 56 at 3. In cases where the "government mishandling" exception is to be applied, a proposal which arrives late can be considered if it is shown that the sole or paramount reason for the late receipt was government impropriety. Id. at 3-4; Southeastern Enters. Inc., B-237867, Mar. 21, 1990, 90-1 CPD ¶ 314 at 3. In determining whether that standard is met, we take into account whether the offeror significantly contributed to the late delivery by not acting reasonably in fulfilling its own responsibility to submit its proposal in a timely manner. Einhorn Yaffee Prescott, B-259552, Mar. 20, 1995, 95-1 CPD ¶ 153 at 3.

In this case, we conclude that the protester's own actions were the paramount cause for the late delivery of its proposal to the contracting officer. First, Russo did not mail its proposal until 1 day prior to the due date. Second, Russo failed to indicate on the outside of its package that the envelope contained a proposal, the time specified for receipt, or the solicitation number. Consequently, although the name of the contracting officer and her location in the A&MMS office appeared on the envelope, there was no marking on the package which would have alerted a mail clerk to expedite delivery of the package to that office.² See Secure Applications, Inc., B-261885, Oct. 26, 1995, 95-2 CPD ¶ 190 at 3.

The fact that the package arrived at the VA's Palo Alto central mail room prior to closing is of no significance here. The RFP required receipt of proposals at the "address specified," a term which refers to the office responsible for the ultimate receipt and safeguarding of the bids or proposals. That location, as in this case,

²Russo asserts that it included the contracting officer's telephone number on the outside of the package, arguing that "[i]t is therefore reasonable to assume that a telephone call could have been made to or from the mailroom prior to the deadline for receipt of proposals." Protester's comments at 2. Russo also contends that "[i]t is the practice of contracting officers to notify mailroom and entrance security personnel of an upcoming deadline for receipt of bids or proposals." Id. at 3. As already stated, it is the responsibility of the offeror to deliver its proposal to the proper place at the proper time. Alpha Technical Servs., Inc., supra, at 3. Contrary to the protester's assertions, there is no legal requirement for contracting officers to alert mail room staff or security personnel of an impending closing time. Nor is there any requirement for the mail room staff to inform a contracting office of the arrival of correspondence, especially if it is not clearly marked as containing a proposal.

will usually be identified by name, see, e.g., Adrian Supply Co., B-243904, B-243904.2, Aug. 7, 1991, 91-2 CPD ¶ 140 at 1, recon. denied, B-243904.3, Jan. 16, 1992, 92-1 CPD ¶ 76 ("Operational Contracting Division"); by code or symbol, such as here, see, e.g., Nuaire, Inc., B-221551, Apr. 2, 1986, 86-1 CPD ¶ 314 at 2 ("VA Medical Center 648/90f"); or by room number. See Larry J. Robinson & Co., Inc., B-234991, June 13, 1989, 89-1 CPD ¶ 559 at 1 ("Rm C-121"). In such cases, receipt by the agency's mail room or other receiving facility does not constitute receipt by the "office specified" in the solicitation for receipt of proposals. See C.R. Hipp Constr. Co., Inc., B-274328, Nov. 20, 1996, 96-2 CPD ¶ 195 at 2. An offeror must allow sufficient time for the proposal to pass through any intermediate stops and reach the designated office on time. Systems for Bus., B-224409, Aug. 6, 1986, 86-2 CPD ¶ 164 at 3.

Here, the office designated in the solicitation for receipt of proposals was the A&MMS office, and it is undisputed that Russo's proposal did not arrive at that location until after closing. Since the protester did not adequately identify its mailed package as containing a proposal designated for a particular solicitation, closing date, or time, and also failed to allow adequate time to ensure timely receipt by the contracting officer, we conclude that the VA properly rejected the proposal as late.

The protest is denied.

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